

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 15, 2007

D049068 People v. Howard

The judgment is affirmed as modified. The trial court is directed to prepare a corrected abstract of judgment reflecting the modification and forward a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. McConnell, P.J.; We Concur: Benke, J., Haller, J.

D049020 People v. Stuedemann

Order certifying opinion for publication.

D049396 Whaley v. State of California Employment Development Department

The petition for rehearing is denied.

D051206 Jeld-Wen v. Superior Court of San Diego County/UDC Homes, Inc.

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 16, 2007

D050421 People v. Graddy

The One Strike enhancements on counts 1 and 2 are stricken. The case is remanded for resentencing. In all other respects, the judgment is affirmed. Irion, J.; We Concur: Nares, Acting P.J., McIntyre, J.

D049160 In re the Marriage of McDonald

Affirmed. Irion, J.; We Concur: McDonald, Acting P.J., McIntyre, J.

D051332 In re Cielo B., Juveniles

Appellant has failed to file a brief . The appeal is dismissed.

D044103 People v. Rivera

The opinion filed October 4, 2007, is ordered certified for publication.

D051815 In re Davis on Habeas Corpus

The denial of a petition for writ of habeas corpus is not appealable. The appeal is dismissed.

D049869 Hughes v. Frontrange Solutions USA INC., et al.

The judgment is affirmed. Irion, J.; We Concur: McDonald, Acting P.J., McIntyre, J.

D050407 In re Alexandria M. et al., Juveniles

The order terminating dependency jurisdiction is affirmed. The orders concerning custody, visitation and child support are reversed. The matter is remanded to the family court for a hearing on the issues of custody, visitation and child support. The family court may consider the parents' settlement agreement regarding custody and visitation in fashioning its orders regarding these matters in the best interests of the children. Until new custody, visitation and child support orders are issued by the family court, the current orders are to remain in place to prevent further disruption of the children's lives. Nares, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

D047342 People v. Dixon

Appellant's petition for rehearing is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 17, 2007

D047740 People v. Booth

The judgment is reversed in part and the case is remanded for the trial court to conduct a new sentencing hearing. In all other respects, the judgment is affirmed. Irion, J.; We Concur: Haller, Acting P.J., McDonald, J.

D051795 Losse v. Superior Court of San Diego County/Ellery

The petition is denied.

D048907 People v. Williams

Williams's claim on appeal that the court imposed the wrong sentencing rules is dismissed. The judgment is affirmed. Nares, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

D049218 People v. Thompson

The portion of the judgment staying the one-year enhancement for Thompson's prior prison term (Pen. Code, § 667.5, subd. (b)) is reversed and the matter remanded for the trial court to decide how to proceed concerning that enhancement. In all other respects, the judgment is affirmed. O'Rourke, J.; We Concur: Nares, Acting P.J., Haller, J.

D050000 People v. Pelis

The judgment is affirmed. McConnell, P.J.; We Concur: McIntyre, J., O'Rourke, J.

**D051685 Natividad P. v. Superior Court of San Diego County/San Diego County
Health and Human Services Agency**

The attorney for petitioner Natividad P. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

**D051668 Jonathan S. v. Superior Court of San Diego County/San Diego County
Health and Human Services Agency**

The attorney for petitioner Jonathan S. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 17 (Continued)

D051492 Elvira V. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

No timely petition for writ relief has been filed as to Rommel H. The notice of intent is deemed to be abandoned. The case is dismissed.

D051459 Deshan A. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

No timely petition for writ relief has been filed as to Deshan A. The notice of intent is deemed to be abandoned. The case is dismissed.

D043697 Shirk v. Vista Unified School District

On April 5, 2005, this Court reversed a judgment of dismissal and awarded costs to Appellant in the above-entitled case. On August 20, 2007 (modified on October 10, 2007), the Supreme Court reversed our judgment and remanded the matter. By remittitur dated October 10, 2007, this Court was directed to award costs, if any. The parties are to bear their own costs in this review.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 18, 2007

D049318 Bell v. Andrew

Order affirmed. Appellant to pay respondent's costs on appeal. Haller, Acting P.J.;
We Concur: O'Rourke, J., Aaron, J.

D049807 In re E.P. et al., Juveniles

The findings, orders and judgments of the trial court are affirmed as to A.P. and Edward. The judgment terminating parental rights as to E.P. is reversed, and the matter is remanded to the trial court to conduct a new hearing for E.P. under section 366.26. McIntyre, J.; We Concur: Nares, Acting P.J., O'Rourke, J.

D050816 In re Marc R., a Juvenile

The judgment is affirmed. O'Rourke, J.; We Concur: Benke, Acting P.J., McIntyre, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 18, 2007 (Continued)

D049618 In re Teague on Habeas Corpus

Petitioner Michael Leyland Teague in the above-entitled matter argues trial counsel Kendall Lee Byrd in defending him against charges of battery on a cohabitant and making criminal threats provided ineffective assistance in failing to investigate, interview and call as a witness at trial Deanna Weddell. (People v. Teague, Superior Court of Riverside County, case No. SWF3045.) Petitioner argues Weddell would have provided important exculpatory evidence.

This court has granted an order to show cause. To resolve this matter it is necessary certain facts be determined. To that end the Superior Court of Riverside County shall appoint an active or retired judge who, acting as a referee, shall hold as soon as reasonably possible an evidentiary hearing and make findings of fact on the following questions:

1. When did Weddell discuss with Michelle Flowers, the victim of the charged offenses, the events of December 2002 and January 2003 that led to petitioner's prosecution in this case?
2. What did Flowers tell Weddell about those events?
3. Did Flowers directly or impliedly state that her accusations against petitioner were untrue or exaggerated?
4. When did Weddell discuss with Sonya Conant, Flowers's mother, the events of December 2002 and January 2003 that led to petitioner's prosecution in his case?
5. What did Conant tell Weddell about those events?
6. What efforts did Weddell make to convey this information to petitioner, petitioner's family and petitioner's trial counsel?
7. When did Weddell make these efforts?
8. When did trial counsel learn of Weddell's discussions with Flowers and/or Conant concerning the events leading to petitioner's prosecution in this case?
9. If trial counsel was aware of discussions between Weddell and Flowers and/or Conant, what did he understand the content of those discussions to be?
10. If trial counsel was aware of these discussions before or during trial, why did he not offer Weddell as a defense witness?

The referee shall prepare and file with this court, and serve on counsel, a report of the proceedings conducted pursuant to this order, the evidence adduced and the findings of fact on or before 90 days from the date of this order.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 18, 2007 (Continued)

D050934 In re Viray on Habeas Corpus

For good cause shown, respondent is ordered to show cause why the relief requested should not be granted.

The Clerk of the Court is directed to provide Appellate Defenders, Inc. with copies of the petition, informal response and reply. Appellant Defenders is directed to submit, within 10 court days, a recommendation for counsel to represent petitioner in this matter.

Within 30 days after appointment of counsel, petitioner is directed to file a supplemental petition. Respondent may file a return within 30 days after the supplemental petition is filed. Petitioner may file a traverse within 20 days after the return is filed.

Absent a request by the parties within 10 days after the return is filed, oral argument will be deemed waived. If a party requests oral argument, the request should be in letter form with proof of service on the other parties. The letter should also identify the focus of the party's argument and the amount of time requested, not to exceed 15 minutes.

D047358 Fraser III et al. v. Rudick

The court's order denying Rudick's motion to recover expert witness costs for the services of the expert witnesses he claims assisted him in the preparation of his defense at trial, but who did not testify at trial, is reversed. The matter is remanded with directions that the court exercise its discretion in determining under section 998(c)(1) whether the services of the expert witnesses in question were "actually incurred and reasonably necessary in . . . preparation of trial" within the meaning of that subdivision; and the reasonable sum, if any, that the Frasers should be ordered to pay for those services. Nares, J.; We Concur: Benke, Acting P.J., Huffman, J.

D050391 People v. White

The judgment is affirmed. Benke, Acting P.J.; We Concur: McIntyre, J., Irion, J.

D051625 Flores v. Sadik

Pursuant to California Rules of Court, rule 8.140, the appeal filed August 29, 2007, is dismissed for appellant's failure to timely designate the record (Cal. Rules of Court, rules 8.120(a), 8.130(a)).

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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October 19, 2007

D050499 In re M.J. et al., Juveniles

The judgments and orders are affirmed. Irion, J.; We Concur: Nares, Acting P.J., McIntyre, J.

D049387 TG Oceanside L.P. v. City of Oceanside et al.

The judgment is reversed with directions that the court issue an order denying T.G. Oceanside, L.P.'s petition for writ of mandate. The parties shall bear their own costs on appeal. O'Rourke, J.; We Concur: Benke, Acting P.J., Haller, J.

D050006 Betts v. City National Bank

The probate court's order on the second section 21320 application is reversed to the extent that it determined that the claims against City National and Wells Fargo in the second proposed petition would constitute a contest to the Trust. CERTIFIED FOR PUBLICATION. Irion, J.; We Concur: McConnell, P.J., Aaron, J.

D048488 People v. Flores

The judgment is modified to strike the lesser included convictions for counts 1 and 5, and to stay the term imposed for count 2 under section 654. The trial court is directed to amend the abstract of judgment accordingly and to forward an amended abstract to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed. Huffman, J.; We Concur: McConnell, P.J., McIntyre, J.

D048974 DeVillers et al. v. County of San Diego

The judgment is reversed and the matter is remanded to the trial court with directions to grant the County's motion for judgment notwithstanding the verdict. The County is entitled to costs on appeal. CERTIFIED FOR PUBLICATION. McDonald, Acting P.J.; We Concur: McIntyre, J., Irion, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 19, 2007 (Continued)

D049039 People v. Mosby

The judgment is affirmed. McDonald, J.; We Concur: Nares, Acting P.J., McIntyre, J.

D046839 In re the Marriage of Brown

The judgment is affirmed. David is awarded his costs on appeal. McIntyre, J.;
We Concur: Benke, Acting P.J., Irion, J.

D049874 Zaya v. Chaker

The order is affirmed. Zaya is awarded her costs of appeal. McIntyre, J.; We Concur: Benke,
Acting P.J., Nares, J.

D049426 Cooley et al. v. Miller

The judgment is reversed and the case is remanded to the trial court for further proceedings in
accordance with this opinion. The parties are to bear their own costs on appeal. McIntyre, J.;
We Concur: Benke, Acting P.J., Nares, J.

D051531 Great Lakes Surgery Center LTD.

The appeal is dismissed for appellant's failure to timely designate the record.

D051289 In re Malvia on Habeas Corpus

The petition is denied.

D051577 In re Moon on Habeas Corpus

The petition for writ of habeas corpus has been read and considered by Justices Huffman, Haller
and Irion. Petitioner contends his sentence violates the United States Supreme Court's decision
in *Blakely v. Washington* (2004) 542 U.S. 296, as applied to California's sentencing scheme by
Cunningham v. California (2007) 549 U.S. ___, 127 S. Ct. 856, 871. However, the *Blakely*
decision does not apply retroactively to cases, such as petitioner's, that are final or are before the
court on collateral review. (*In re Consiglio* (2005) 128 Cal.App.4th 511, 516; *Schardt v. Payne*
(2005) 414 F.3d 1025, 1036.) The petition is denied.

D051644 Brisby et al. v. Superior Court of San Diego County/SDG&E et al.

The petition is denied.

**D051189 A.V. v. Superior Court of San Diego County/San Diego County Health and
Human Services Agency**

The petition is denied. The request for a stay is denied. Aaron, J.; We Concur: Benke, Acting
P.J., McDonald, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
October 19, 2007 (Continued)

D051516 In re Marlon E., a Juvenile

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

D051801 In re Kellam on Habeas Corpus

The petition is denied.

D051762 In re Daughtery

The petition is denied.

D051682 Jernigan v. The Superior Court of San Diego County/People

The petition is denied.

D050790 In re Valenzuela on Habeas Corpus

The petition is denied.